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PART XI.

CASE OF THE BRITISH STEAMSHIP APPAM, CAPTURED BY
GERMAN NAVAL FORCES AND BROUGHT BY A PRIZE
CREW INTO AN AMERICAN PORT.

The German Ambassador to the Secretary of State.

[Translation.]

J. Nr. A. 785.]

GERMAN EMBASSY,

Washington, February 2, 1916.

MR. SECRETARY OF STATE: I have the honor to inform Your Excellency that the British steamer *Appam*, captured by the German naval forces, arrived at Newport News, Va., on the 1st of this month under the command of Lieut. Berg of the navy. The commanding officer intends, in accordance with Article XIX of the Prusso-American Treaty of September 10, 1785, to stay in an American port until further notice.

The *Appam* has not been converted into an auxiliary cruiser, is not armed, and has made no prize under Mr. Berg's command. She carries on board the crews of seven enemy vessels taken by H. M. S. *Moewe* who have been transferred to her by that ship.

There is on board a locked-up military party of the enemy, whose internment in the United States I request.

The crew of the *Appam* tried to offer resistance when the ship was captured, as the guns at hand were already in place and trained on the German warship. The members of the crew are therefore to be looked upon likewise as combatants, and I have the honor to ask of Your Excellency that they too be detained in the United States until the end of the war.

Accept, etc.,

J. BERNSTORFF.

The Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, February 3, 1916.

MY DEAR MR. AMBASSADOR: Referring to our conversation of to-day in regard to the steamer *Appam* now at Norfolk in charge of a German prize crew, I have received from the collector of customs in Norfolk a list (copy of which is inclosed) ¹ of persons on board the *Appam* which the prize master asserts are in the military or naval service of His Britannic Majesty and whom he believes, therefore, should not be released from his vessel. I desire, therefore, to ask if you will be good enough to inform me as to whether any of the gentlemen named on the list are members of His Majesty's armed forces.

I am, etc.,

ROBERT LANSING.

Memorandum from the British Embassy.

BRITISH EMBASSY,
Washington, February 4, 1916.

The British Embassy has the honour to refer to the rule of international law now generally recognized and embodied in Articles 21 and 23 of The Hague Convention XIII of 1907 and to request that the principles in question should be applied to the *Appam*.

These principles have been accepted by both the British and the United States Governments. The Queen's Proclamation of 1861 interdicted the armed ships of belligerents from carrying prizes made by them into British ports, harbours, roadsteads, or waters, a measure of which the Secretary of State of the United States expressed his approval.

In the report of the American delegates to The Hague Conference it is stated that while Articles 21 and 22 seemed unobjectionable, Article 23 (allowing the sequestration of prizes) "was objectionable for the reason that it involves a neutral in participation in the war to the extent of giving asylum to a prize which the belligerent may not be able to conduct to a home port. This article represents the revival of an

¹ Not printed.

ancient abuse and should not be approved. In this connection it is proper to note that a proposition absolutely forbidding the destruction of a neutral prize, which was vigorously supported by England and the United States, failed of adoption. Had the proposition been adopted there would have been some reason for authorizing such an asylum to be afforded in the case of neutral prizes."

This declaration shows that the Prussian treaty of 1799 (by which in any case Great Britain, not being a party, can not be affected) was regarded as obsolete and inconsistent with modern doctrines, and the fact that the United States Government adhered to the convention while reserving Article 23 shows that in so far as the provisions of the treaty of 1799 conflict with the convention they are regarded as overriden by the later instrument.

The rule embodied in Article 21 of the 1907 Convention is of general application, and the fact that Great Britain has not ratified the convention does not affect the obligation of the United States to treat ships and property of all nations in accordance with what the attitude of the United States towards the convention shows that they themselves regarded as the general rule.

Relying on the above considerations this Embassy is instructed to request that if the *Appam* is regarded by the United States Government as a prize she should be restored to her owners and the prize crew interned.

The British Embassy begs to add that according to information received the captain of the German prize crew signalled on arrival that the ship was a part of the armed naval force of the German Empire. If this claim is advanced the United States Government will doubtless deal with the ship according to their recognized practice. If, however, she is regarded as a prize, this Embassy expresses its entire confidence that she will not be allowed to leave United States jurisdiction under German control in a condition which would enable her to undertake offensive action; and that she will not be allowed to increase or augment her force by adding to her armament or her crew or by transfer of trained men to the ship or by a change of personnel or in any other manner. The British Embassy begs to add that the claim that the ship was a war vessel shows that if allowed by the United States to leave as a prize under German control she would be used by the Germans as a man-of-war; and it is needless to remind the State Department of the doctrine accepted by both our Governments, under which the British Government

would be compelled to hold the United States Government responsible for any injury which she may inflict.

CECIL SPRING RICE.

*Memorandum from the German Embassy.*¹

Telegram from the German Government concerning its opinion on *Appam* case:

Appam is not an auxiliary cruiser but a prize. Therefore she must be dealt with according to Article 19 of Prusso-American Treaty of 1799. Article 21 of Hague Convention concerning neutrality at sea is not applicable, as this convention was not ratified by England and is therefore not binding in present war according to Article 28. The above-mentioned Article 19 authorizes a prize ship to remain in American ports as long as she pleases. Neither the ship nor the prize crew can therefore be interned nor can there be question of turning the prize over to English.

Memorandum from the British Embassy.

BRITISH EMBASSY,
Washington, February 12, 1916.

It has been ascertained from Norfolk that no restrictions are placed upon persons going on board the *Appam* at the invitation of her commander, though the latter reports daily to the collector of customs that all visitors have returned to the shore.

The British Embassy cannot but view this arrangement with some anxiety and, referring to their memorandum of February 3rd, beg to reiterate the expression of their confidence that adequate precautions are being taken with a view to preventing any increase in the armament or crew of the ship or any change in her personnel which would augment her force.

The present notification is not of course to be considered as a request for action or as a complaint, but is made in fulfilment of the duty incumbent on this Embassy to inform the State Department at once of any information which may reach them relative to matters appertaining to pending questions between the two Governments.

¹ Received at the Department of State February 8, 1916.

Memorandum from the British Embassy.

BRITISH EMBASSY,

Washington, February 15, 1916.

The British Embassy has the honour to inform the State Department that the British Government reserves all rights under accepted principles and practice of international law with regard to the *Appam*, and that any action taken in the matter by the owners in maintenance of their interests is not in any way to be considered as prejudicing any claim advanced or to be advanced by the British Government.

The German Ambassador to the Secretary of State.

J. Nr. A. 1293.]

GERMAN EMBASSY,

Washington, February 22, 1916.

MY DEAR MR. SECRETARY: Lieut. Hans Berg, of the German Imperial Navy and commander of H. M. S. *Appam*, now lying at anchor near Newport News, Va., has informed me that a libel was filed against said vessel in the United States District Court for the Eastern District of Virginia, at Norfolk, on the 16th day of February, 1916, by the British and African Steam Navigation Co., Limited, and that, under the authority of said court, he has been cited by the marshal of the eastern district of Virginia to appear before said court on Friday, the 3d day of March, 1916, to answer the said libel.

As the *Appam* was captured at sea by a German man-of-war and brought to the Virginian port as a prize ship according to the treaty existing between our countries, you may well appreciate my surprise at the action which has been taken.

Article XIX of the treaty of 1799 between Prussia and the United States, renewed in part by Article XII of the treaty of 1828, provides that "the vessels and effects taken from" the enemies of the contracting parties may be carried freely wheresoever they please, and that such prizes shall not be "put under legal process when they come to and enter the ports of the other party. * * *"

In view of the terms of the treaty, I am at a loss to understand why such action has been taken by a court of your country. It may be argued that it has been because Article 21 of The Hague "Convention

concerning the rights and duties of neutral powers in naval war" is applicable. This article provides:

A prize may only be brought into a neutral port on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not the neutral power must order it to leave at once; should it fail to obey the neutral power must employ the means at its disposal to release it with its officers and crew and to intern the crew.

But as Great Britain has not ratified the convention the article is not binding, for the reason that Article 28 provides: "The provisions of the present convention do not apply except to the contracting powers, and then only if all the belligerents are parties to the convention."

Besides, the *Appam* flies the naval flag of and belongs to the German Government, and therefore the possession of the captors in a neutral port is the possession of their sovereign. The sovereign whose officers have captured the vessel as a prize of war remains in possession of that vessel and has full power over her. The neutral sovereign or its court can take no cognizance of the question of prize or no prize and can not wrest from the possession of the captor a prize of war brought into its ports.

The position which I take is fully supported by an opinion of the Attorney General of the United States (7 Op., 122), the syllabus of which recites that a "foreign ship of war or any prize of hers in command of a public officer possesses in the ports of the United States the right of extritoriality and is not subject to the local jurisdiction."

I would therefore most respectfully protest against the action of the United States District Court, and request that you may ask the Attorney General to instruct the United States District Attorney for the Eastern District of Virginia to appear before the United States District Court and take such steps as may be necessary and proper to secure the prompt dismissal of the libel.

I am, etc.,

J. BERNSTORFF.

The Secretary of State to the German Ambassador.

DEPARTMENT OF STATE,
Washington, March 2, 1916.

EXCELLENCY: I have the honor to acknowledge the receipt of Your Excellency's note of the 2d of February, informing me that the British

steamer *Appam*, captured by the German naval forces, had arrived at Norfolk under the command of Lieut. Berg, of the Imperial German Navy, who intends, in accordance, as he believes, with Article XIX of the Prussian-American treaty of 1799, to remain in American waters until further notice, and that the *Appam* has not been converted into an auxiliary cruiser, is not armed, and has taken no prizes under Lieut. Berg's command. In conclusion Your Excellency requests internment in the United States during the remainder of the war of a military party belonging, Your Excellency states, to the enemy of Germany and also the internment of the crew of the *Appam*, inasmuch as they offered resistance to capture by His Majesty's forces.

I have the honor also to acknowledge the receipt of Your Excellency's note of February 22, calling my attention to a libel which has been filed against the *Appam* by the United States District Court on February 16 by the British and African Steam Navigation Co., Limited, and to the fact that Lieut. Berg has been cited to appear before the court on March 3 next to answer this libel. Your Excellency points out that in view of the terms of Article XIX of the treaty of 1799 and of the inoperation of The Hague Convention relating to neutral rights and duties in naval warfare, you are at a loss to understand why such action has been taken in this country. Your Excellency, moreover, asserts in effect that as the *Appam* flies the naval flag of and belongs to the German Government, and as the possession of the captors is the possession of their sovereign, "the neutral sovereign or its court can take no cognizance of the question of prize or no prize and can not wrest from the possession of the captor a prize of war brought into its ports." Your Excellency, in conclusion, protests against the action of the court and requests that the Attorney General instruct the proper United States District Attorney to take such steps as may be necessary and proper to secure the prompt dismissal of the libel.

Article XIX of the treaty of 1799, to which Your Excellency refers, reads as follows:

The vessels of war, public and private, of both parties, shall carry (conduire) freely, wheresoever they please, the vessels and effects taken (pris) from their enemies, without being obliged to pay any duties, charges, or fees to officers of admiralty, of the customs, or any others; nor shall such prizes (prises) be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried (conduites) out again at any time by their captors (le vaisseau preneur) to the places expressed in their commissions, which the commanding officer of such vessel (le dit vaisseau) shall be obliged to show. But conformably

to the treaties existing between the United States and Great Britain, no vessel (vaisseau) that shall have made a prize (prise) upon British subjects, shall have a right to shelter in the ports of the United States, but if (il est) forced therein by tempests, or any other danger or accident of the sea, they (il sera) shall be obliged to depart as soon as possible.

This translation is taken from the published treaties of the United States, and while not conforming strictly to the original French text (copy of which is inclosed), is sufficiently accurate for the purposes of this note. At the outset it may be pointed out that as the object of this provision was to mollify the existing practice of nations as to asylum for prizes brought into neutral ports by men-of-war, it is subject to a strict interpretation when its privileges are invoked in a given case in modification of the established rule. By a reasonable interpretation of Article XIX, however, it seems clear that it is applicable only to prizes which are brought into American ports by vessels of war. The *Appam*, however, as Your Excellency is aware, was not accompanied by a ship of war, but came into the port of Norfolk alone in charge of a prize master and crew. Moreover, the treaty article allows to capturing vessels the privileges of carrying out their prizes again "to the places expressed in their commissions." The commissions referred to are manifestly those of the captor vessels which accompany prizes into port and not those of the officers of the prizes arriving in port without convoy, and it is clear that the port of refuge was not to be made a port of ultimate destination or indefinite asylum. In the case of the *Appam* the commission of Lieut. Berg, a copy of which was given to the collector of customs at Norfolk, not only is a commission of a prize master, but directs him to bring the *Appam* to the nearest American port and "there to lay her up." In the opinion of the Government of the United States, therefore, the case of the *Appam* does not fall within the evident meaning of the treaty provision which contemplates temporary asylum for vessels of war accompanying prizes while en route to the places named in the commander's commission, but not the deposit of the spoils of war in an American port. In this interpretation of the treaty, which I believe is the only one warranted by the terms of the provision and by the British treaties referred to in Article XIX, and by other contemporaneous treaties, the Government of the United States considers itself free from any obligation to accord the *Appam* the privileges stipulated in Article XIX of the treaty of 1799.

Under this construction of the treaty the *Appam* can enjoy only those

privileges usually granted by maritime nations, including Germany, to prizes of war, namely, to enter neutral ports only on case of stress of weather, want of fuel and provisions, or necessity of repairs, but to leave as soon as the cause of their entry has been removed.

As to the grounds upon which the application for the libel of the *Appam* by the United States court was made, this Department has no direct information; but it is understood that the libelant contends that the *Appam* is not, assuming that it is a prize of the German Government, the property of that Government, but that, on the contrary, the title to the vessel is now properly in the British owners. Whether in these circumstances the United States court has properly or improperly assumed jurisdiction of the case and taken custody of the ship is a legal question which, according to American practice, must now be decided by the municipal courts of this country. With the purpose, however, of having Your Excellency's views as to this matter brought to the attention of the court, I have transmitted your note of February 22 to the Attorney General, with a request that he instruct the United States District Attorney to appear in the case as *amicus curiæ* and present to the court a copy of Your Excellency's note.

As to the internment of the military party which Your Excellency states was on board the *Appam*, as well as the officers and crew who offered resistance to capture by His Majesty's ships, I have the honor to inform you that the Government has, after due consideration, concluded that they should be released from detention on board the *Appam*, together with their personal effects.

Accept, etc.,

ROBERT LANSING.

The German Ambassador to the Secretary of State.

J. Nr. A. 1829.]

GERMAN EMBASSY,
Washington, March 14, 1916.

MY DEAR MR. SECRETARY: Referring to previous correspondence in regard to H. M. S. *Appam*, am informed by our counsel that the State and Treasury Departments, mainly through the collector of customs, have been requesting the District Court of the United States for the Eastern District of Virginia to guard against two things: (1) An augmentation of the crew of the *Appam*; and (2) an attempt on her part

to escape; and that such action would tend to disturb the peace of mind of the court.

While I can not understand on what theory the court can be asked to have anything to do with questions of augmentation, I can readily appreciate its desire to prevent any possible escape so long as court proceedings are pending.

In view of the action of the Departments, the court appears unwilling to permit the ship to continue in the stream with only two keepers, and has requested counsel to consent to her removal to a wharf or some safer anchorage.

Lieut. Berg objects to her being taken to a wharf on account of increased difficulty of controlling his crew, the danger of annoyance from curiosity seekers, and the possibility of injury from hostile sources.

Because of the divergent wishes in this respect, I believe that the court will be fully satisfied, and at the same time Lieut. Berg can carry out his wishes, if I now assure you, as I do, that, while reserving all the rights of the German Government in this case, both before the court and in our diplomatic negotiations, and with a further reservation that such assurance and agreement shall be without prejudice to the defense, no change shall be made in the status quo with respect to augmentation of the crew or equipment that might be considered a breach of neutrality, and that no attempt to run the vessel away will be made so long as said ship remains under the custody of said court.

I would therefore most respectfully request that you may communicate my assurance to the Treasury Department, and that both Departments may communicate, through the proper officers, with the court and inform it that, in view of my assurance, they have no further requests to make along this line at the present time, and that for the present it would not appear to be necessary that the ship be removed to a wharf.

In my note of February 22 I requested you to ask the Attorney General to instruct the United States District Attorney for the Eastern District of Virginia to appear before the United States District Court and take such steps as may be necessary and proper to secure the dismissal of the libel. At a hearing held before said court at Richmond, Va., on March 7, said attorney appeared and presented a copy of my said note of February 22 to you, but did not ask for the dismissal of the libel. In view of this fact, and believing at this time that his presence in said court will not be further necessary for assisting in arriving at a solution of the case, I would most respectfully request that you

may ask the Attorney General to instruct him not to appear further without securing express instructions so to do for such special reasons as your Government may have for so authorizing him.

I am etc.,

J. BERNSTORFF.

The German Ambassador to the Secretary of State.

[Translation.]

J. Nr. A. 1727.]

GERMAN EMBASSY,
Washington, March 16, 1916.

In reply to your kind note of the 2d instant, I have the honor, in compliance with instructions, to submit to you the inclosed memorandum of the Imperial Government on the subject that has been received by me.

Should the Government of the United States fail to concur in the Imperial Government's interpretation, the Imperial Government would propose that the construction of the treaty in question be referred to The Hague Court of Arbitration in the same way as the Imperial Government proposed in the *William P. Frye* case in Secretary of State von Jagow's note of November 29 last, to Mr. Gerard, ambassador of the United States at Berlin, provided that the status quo of the steamship *Appam* will remain unchanged throughout the arbitration proceedings and that the steamer will be allowed to remain with her prize crew in an American port during that time.

Accept, etc.,

J. BERNSTORFF.

[Inclosure.]

MEMORANDUM.

J. Nr. A 1727/16.]

GERMAN EMBASSY.

The Imperial Government does not consider correct the interpretation of the Department of State of Article 19 of the treaty of 1799 as given in the note.

The Department of State criticized that the *Appam* was not brought into port by a warship, but arrived only with a prize crew on board. The treaty of 1799, referring to prizes accompanied by a warship, speaks, of course, of commercial warfare as it was usual in those times and

which could be carried on by both parties only by privateers. This made it necessary that the prize was brought into port by the capturing vessel. The development of modern cruiser warfare, where, as a rule, the warship sends her prize into port by a military prize crew, can not render the stipulations of Article 19 of said treaty null and void. The prize masters and prize crew, who represent the authority of the belligerent State, now take the place which the capturing vessel held formerly. That such stipulations are not in contradiction to the general rules of international law, and that, therefore, the treaty is not subject to the especially strict interpretation given to it by the Department of State, is proved by Article 23 of The Hague Convention regarding neutrality on sea, which was adopted by a great majority, although under reservation by the United States, Great Britain, and Japan.

The Department of State missed in the commission of Lieut. Berg. an order to take the prize into a German port, as it is unwilling to admit the permanent internment of the German prize in an American port as a consequence of the treaty. As proved by the last but obsolete sentences of Article 19 of the treaty of 1785 and Article 19 of the treaty of 1799, the object of Article 19 is to grant asylum or shelter to prizes of one contracting party in the ports of the other party. The asylum naturally continues only as long as the prize crew is on board and the danger of being captured by enemy naval forces exists. Both premises prevail in this case. Lieut. Berg, an officer of the Imperial Navy, was commissioned by the commander of a German warship to seek with his prize in an American port the asylum guaranteed by the treaty. The opinion of the Department of State that the commission must mention a German port of destination for the prize is unfounded, as Article 19 only provides the freedom of the prize to leave for the places which are named in the commission, but does not make the right of asylum depend on such port being mentioned. Such an indication seems superfluous if the prize is conducted by a prize crew mustered from the Imperial Navy, for such crew has to bring the prize into a German port as soon as possible. At present the claim for asylum naturally still exists, considering the uneven distribution of the domination of the seas between the belligerents.

As long as the right of asylum lasts the jurisdiction of American courts over the prize is formally excluded by Article 19; a German prize court alone is competent. The opinion of the Department of State that the American courts must decide about the claims of the British shipping company is incompatible with the treaty stipulations.

It is therefore respectfully requested that the prize crew should be permitted to remain in the American port, and also that the legal steps before an American court should be suspended.

British Ambassador to the Secretary of State.

BRITISH EMBASSY,
Washington, March 31, 1916.

MY DEAR MR. SECRETARY: On February 3rd, last I had the honour, under instructions from my Government, to request that if the *Appam* were regarded by the United States Government as a prize she should be restored to her owners and the prize crew interned.

Since that date it has come to my knowledge that a proceeding has been brought in the Admiralty Court of the United States by the owners of the vessel for its restitution and that the court has taken jurisdiction of the suit. It appears that the vessel had been detained in an American port by the prize crew for more than two weeks before suit was instituted. I am informed that the vessel was in a seaworthy condition when brought into port and that the time which elapsed before the beginning of the suit was more than sufficient to supply any deficiencies of coal and provisions. The detention of the vessel for such a period of time was therefore a violation of the neutrality of the United States under the Law of Nations as expressed in Articles 21 and 22 of Convention 13 as formulated at The Hague in 1907 and as previously understood and applied among the nations.

I understand that the Admiralty Courts of the United States have jurisdiction to decree the restitution to the owners of a prize brought into an American port by a belligerent captor when there has been a violation of American neutrality on the part of the captor. It seems to me desirable and proper that such violation of American neutrality should be called to the court's attention, not only by the private owners of the captured vessel but also by the official representatives of the United States Government.

I have the honour to request that if the United States Government do not see their way clear to direct by executive order, as suggested in my note above referred to, the return of the vessel to her British owners, instructions may be given, should there be no objection, to the proper

representatives of the Department of Justice of the United States to appear in their official capacity before the United States District Court for the Eastern District of Virginia, in which the suit for the recovery of the steamship *Appam* is pending, and to represent to that court on behalf of the Government of the United States that the detention of the steamship *Appam* under the circumstances above set forth constituted a violation of the neutrality of the United States and apply to the court to direct the return of the vessel to her owners upon due proof of their ownership and of the facts constituting the violation of neutrality above set forth.

I am, etc.,

CECIL SPRING RICE.

The Secretary of State to the British Ambassador.

DEPARTMENT OF STATE,
Washington, April 4, 1916.

MY DEAR MR. AMBASSADOR: I have received your formal note of the 31st ultimo, in which you request that as the *Appam* had violated the neutrality of the United States by her staying in port up to the beginning of the suit now pending against her, such violation of American neutrality be called to the court's attention by the proper representatives of the Department of Justice on behalf of the Government of the United States, and that application be made to the court to direct the return of the vessel to the owners upon due proof of their ownership and of the facts constituting a violation of neutrality.

In reply, allow me to say that as the vessel was in American jurisdiction up until the time of the filing of the suit against her, pending consideration of the question as to whether she was entitled to the privileges claimed for her by the German Government by virtue of Article 19 of the treaty of 1799, and as this Government reached a decision on that question only after the libel had been filed, I am unable to accept your suggestion that the presence of the *Appam* in American waters, in the circumstances, constituted a violation of the neutrality of the United States. Holding this view, I regret that I am unable to comply with your request to have official representations made to the court in the sense of your note under acknowledgment

I am, etc.,

ROBERT LANSING.

The Secretary of State to the German Ambassador.

No. 2217.]

DEPARTMENT OF STATE,
Washington, April 7, 1916.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 16th ultimo, inclosing a memorandum of the Imperial German Government on the subject of the *Appam*, now at Norfolk. The memorandum of the Imperial Government contends, in brief, that Article 19 of the treaty of 1799 "speaks, of course, of commercial warfare as it was usual in those times and which would be carried on by both parties only by privateers," and that the development of modern cruiser warfare, in which a prize master and crew representing the authority of a belligerent State now take the place which the convoying vessel formerly held, should govern the present interpretation of the treaty. The Government of the United States agrees with the German Government's statement that the treaty speaks of a mode of warfare in use at the time the treaty was negotiated. It is precisely for this reason that the Government of the United States does not believe that the treaty was intended to apply to circumstances of modern warfare which are essentially different from those in vogue at the close of the eighteenth century. The Government of the United States does not understand upon what ground the Imperial Government contends that a treaty granting concessions under specifically mentioned circumstances can be construed to apply to a situation involving other and different circumstances. To grant limited asylum in a neutral port to a prize accompanied by the capturing vessel is not the granting of a right of "laying up" in a neutral port a prize which arrives in the control of a prize master and crew.

Your Excellency's Government further contends that Article 19, besides being applicable to modern conditions, is not contrary to the general rules of international law, and therefore not subject to a restricting interpretation, and in support of this cites as declaratory of the general rules of international law Article 23 of Hague Convention XIII. As indicated by the Imperial Government, the United States did not in the case of this convention, and never has, assented to the sequestration of prizes in its ports. The ground of this position of the United States is that it does not, in the opinion of this Government, comport with the obligations of a neutral power to allow its ports to be used either as a place of indefinite refuge for belligerent prizes or as a

place for their sequestration during the proceedings of prize courts. The contention of the Government of the United States in its note of March 2 in this case is consistent with this long-established and well-known policy of the American Government, in the light of which the treaty of 1799 was negotiated and has been enforced and applied. Provided the vessel enters an American port accompanied by a German naval vessel, Article 19 contemplates in the view of this Government merely temporary sojourn of the prize in an American port and not its sequestration there pending the decision of a prize court.

Holding the view that Article 19 is not applicable to the case of the *Appam*, this Government does not consider it necessary to discuss the contention of the Imperial Government that under Article 19 American courts are without jurisdiction to interfere with the prize, and for the same reason it can not accede to the request that the "legal steps before an American court should be suspended."

In Your Excellency's note transmitting the memorandum of your Government it is proposed that should this Government fail to concur in the contentions of the Imperial Government the construction of the treaty in question be referred to The Hague Court of Arbitration in the same way as the Imperial Government has proposed to do in the *William P. Frye* case, provided that the *status quo* of the *Appam* remain unchanged throughout the arbitration proceedings and that the steamer be allowed to remain with her prize crew in an American port during that time. It is regretted that this proposal which appeals to the principle of arbitration, of which this Government is an earnest advocate, can not be accepted in this particular case by the Government of the United States. Its acceptance would manifestly defeat the very object of the United States in its reservation to Article 23 of Convention XIII by allowing the prize to remain in an American port for an indefinite period while the arbitration proceedings were in progress, which might continue until after peace is restored. In this respect the case differs from that of the *William P. Frye*. Moreover, inasmuch as the *Appam* has been libeled in the United States District Court by the alleged owners, this Government, under the American system of government, in which the judicial and executive branches are entirely separate and independent, could not vouch for a continuance of the *status quo* of the prize during the progress of the arbitration proposed by the Imperial Government. The United States Court, having taken jurisdiction of the vessel, that jurisdiction can only be dissolved by judicial proceedings leading

to a decision of the court discharging the case—a procedure which the executive can not summarily terminate.

In these circumstances the Government of the United States can only accept the proposal of the German Government for the arbitration of the meaning of Article 19 of the treaty of 1799, upon the understanding that the *Appam* depart from the territorial jurisdiction of the United States, in the event that the libel is dismissed by the court and after she has had a reasonable time to take on board such supplies as may be necessary, in the judgment of this Government, for a voyage to the nearest port subject to the sovereignty of Germany; and failing this, that she be released and the prize master and crew be interned for the remainder of the war.

Accept, etc.,

ROBERT LANSING.